

REMARKS

The Office Action mailed September 30, 2004, Paper No. 9, and the prior art newly relied upon, have been carefully studied. The claims in the application are now claims 8-15, and these claims define novel and unobvious subject matter under §102 and 103 and therefore should be allowed. Applicant therefore respectfully requests favorable reconsideration and allowance.

The claims have been amended to specify the presence of at least one of laurel extract and chlorophyll. In addition, claim 11 has been amended to specify that the claimed hair growth tonic is substantially free of metal ions, support being found in the examples, none of which contain any metal ions¹. New claim 15 has been added based on the description in applicant's specification starting at page 15, line 16 through page 17, line 6; and new claim 15 is patentable for the reasons given below.

Claims 7-14 have been rejected both under §102 as anticipated by Lee et al USP 5,324,515 (Lee), and as obvious

¹ Of course, it is possible that metal ions may be present as an impurity, i.e. in an insignificant and non-meaningful amount if the water used is so-called "hard" water. In the examples, i.e. formulations 1-6, either "pure water" or "purified water" was used.

under §103 from Lee. These rejections are respectfully traversed².

The present invention is a hair growth tonic which contains, as active ingredient, a culture filtrate of lactic acid bacteria produced by:

culturing said lactic acid bacteria in culture solution;

crushing cellular walls of the lactic acid bacteria in the culture solution obtained by said culture of the lactic acid bacteria; and

removing the residue of said lactic acid bacteria after making the crushed walls into a colloid or dissolving them, wherein

laurel extract and/or chlorophyll is added to obtain such hair growth tonic after diluting the filtrate with a carrier.

The addition of one or both of laurel extract and chlorophyll, which contribute to the effectiveness of the claimed hair growth tonic (see example 3 spanning pages 20 and 21 of applicant's specification, and the drawings of the present application), results in the laurel extract and/or

² The rejections under §102 and 103 are inconsistent. If the claims are anticipated, then they cannot be obvious from the same prior art. If the claims are obvious from such prior art, then they cannot at the same time be anticipated by such prior art. Actually, the claims are neither anticipated nor made obvious by Lee.

chlorophyll infusing into the extract of the crushed cellular walls of the lactic acid bacteria, thus providing improved hair growth activity.

Contrary to the present invention, and as acknowledged in the statement of the rejections, Lee does not disclose the presence or use of either laurel extract or chlorophyll. Therefore, there is no question that the anticipation rejection is incorrect, and should be withdrawn.

There is no anticipation. Applicant therefore requests withdrawal of the rejection based on §102.

As regards the rejection based on §103, Lee incorporates metal ions such as Cu, Fe, Mn, Mg, Zn or Ni as essential components to the culture filtrate of lactic acid bacteria centrifugally separated, which metal ions are excluded from the present invention. Thus, new claim 15 uses the closed "consisting of" transitional language, and claim 11 uses the "consisting essentially of" language, bearing in mind that the metal ions are "essential" components in Lee; moreover, claim 11 specifically excludes the presence of any meaningful quantity of metal ions. Applicant has thus flown in the face of Lee by excluding metal ions, and has achieved success whereas Lee would have suggested failure.

The present invention, contrary to Lee, does not adopt the technique of adding those metal acids. In the

present invention, laurel extract and/or chlorophyll are added to the culture filtrate of lactic acid bacteria centrifugally separated, which is not disclosed in Lee. The rejection points to Lee disclosing flavanoids, and concludes that it would have been obvious to substitute chlorophyll (a free radical scavenger) in place of a flavanoid (another free radical scavenger). The rejection assumes that they are equivalent, but there is no evidence of any such equivalency.

In fact, the flavanoid disclosed in Lee is considerably different from either laurel extract or chlorophyll as regards both chemical construction and properties, and the Lee flavanoid neither has an effect of promoting blood circulation to the peripheral capillaries nor enhances the divisional and multiplication of the hair matrix cells, nor does the Lee flavanoid act as a hair root activator by improving the functions of the hair matrix cells.

The person of ordinary skill in the art would have had no motive or incentive for replacing the flavanoid of Lee with either chlorophyll or laurel extract which have a different function than the flavanoid of Lee.

Applicant's invention would not have been obvious from Lee. Accordingly, the rejection based on §103 should be withdrawn, and such is respectfully requested.

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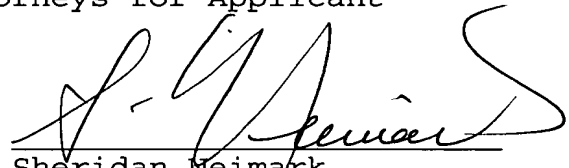
The prior art documents of record and not relied upon have been noted, along with the implication that such documents are deemed by the PTO to be insufficiently pertinent to warrant their application against any of applicant's claims.

Favorable reconsideration and allowance are earnestly solicited.

Respectfully submitted,

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